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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/897,898	07/05/2001	Harm M. Deckers	034547-0104	3117	
75	590 09/16/2002				
Stephen A. Bent			EXAM	EXAMINER	
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Washington, DC 20007-5109			ART UNIT	PAPER NUMBER	
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			DATE MAILED: 09/16/2002	DATE MAILED: 09/16/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examin r	74		Application N .	Applicant(s)			
Marine Lamm    The MAILING DATE of this communication appears on the cover sheet with the correspondence address   Period for Reply	Office Action Summary		09/897,898	DECKERS ET AL.			
The MALING DATE of this communication appears on the cover sheet with th correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION.  Earthstate of time may be available under the procession of 3 CZR 1.138(a). In ne evoid, however, may a roply be timely filed  Earthstate of time may be available under the procession of 3 CZR 1.138(a). In ne evoid, however, may a roply be timely filed  Earthstate of the procession of the procession of 3 CZR 1.138(a). In ne evoid, however, may a roply be timely filed  If the period for reply specified above is less than thirty (30) along, a reply within the statutory minimum of timely of the communication.  If the period for reply specified above is less than thirty (30) along, a reply within the statutory minimum of the statutory of the statutory period will apply and will reply its (6) (MONTHS from the maling date of the communication.  If the period for reply specified above is less than thirty (30) along, a reply with the statutory minimum of the period of the communication.  If the period for reply specified shows, he maximum statutory period will apply and will reply filed. The period of the communication.  Processing the period of the communication of the communication of the communication of the communication.  Status  Status  Status  Status  A period this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Queryle, 1935 C.D. 11, 453 O.G. 213.  Disp stition of Claims  A) Claim(s) 1:24 [slare pending in the application.  4) Claim(s) 1:24 [slare pending in the application.  4) Claim(s) 1:34 [slare pending in the application.  4) Claim(s) 1:34 [slare pending in the application.  5) Claim(s) 1:34 [slare pending in the application.  5) Claim(s) 1:34 [slare pending in the application of the daveloped or bip of the particle pending in the application in the statutory of the pending in			Examin r	Art Unit			
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THE MAILING DATE OF THIS COMMUNICATION.  Edeficions of time may be waited burden the provision of 37 CR 1.13(6). In or event, however, may a reply be limitly filed after SX (8) MONT TIS from the mailing date of this communication.  It NO period for reply is seaffed before the mailing date of this communication.  Failure to reply within the set or extended period for reply will. By statute, cause the application to become ARANDONED (38 U.S.C. § 133).  Any reply recorded by the Office and than three mornins statutory period will go the adverted the mailing date of the communication.  Failure to reply within the set or extended period for reply will. By statute, cause the application to become ARANDONED (38 U.S.C. § 133).  Any reply recorded by the Office and the time the mailing date of this communication, even if timely filed, may reduce any any patient time adjustment. Set 37 CRT 1.774(1).  Status  1) Responsive to communication(s) filled on  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disp sittion of Claims  4) Claim(s) 1-24 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) 1-24 is/are allowed.  6) Claim(s) 1-24 are subject to restriction and/or election requirement.  Application Papers  9) The proposed drawing objected to by the Examiner.  10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Application Papers  11) The proposed drawing correction filed on is/are: a) accepted of the proposed drawing correction filed on is/are: a) accepted of the proposed drawing are required in reply to this Office action.  12) The earth or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a cl	Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the	orrespondence address			
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3) Lightermation Disclosure Statement(s) (PTO-1449) Paper No(s) 6) Lighter:	2) Notice		5) Notice of Informal F				

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## **DETAILED ACTION**

## Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, 13 and 19-24 are, drawn to a method for preparing an emulsion formulation comprising oil bodies and thioredoxin or thioredoxin reductase and products comprising said formulation, classified in class 424, subclass 401.
  - II. Claims 5-12, drawn to a method for preparing an emulsion formulation comprising oil bodies associated with thioredoxin or thioredoxin reductase, classified in class 424, subclass 94.4.
  - III. Claims 14-18, drawn to a method for preparing an emulsion formulation comprising oil bodies containing thioredoxin or thioredoxin reductase, classified in class 424, subclass 94.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II or III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together and they have different modes of operation, i.e. the oil bodies of Claim 1 and those dependent thereon are mixed with thioredoxin or thioredoxin reductase; the oil bodies of Claim 5 are associated with thioredoxin or thioredoxin reductase through an oil body targeting protein; and the oil bodies of Claim 14 contain thioredoxin or thioredoxin reductase.

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3. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I and III, restriction for examination purposes as indicated is proper.

- 4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 5. Election of species should be required prior to a search on the merits in all applications containing both species claims and generic or Markush claims. (MPEP 808.01(a))
- 6. Claim 13 is generic to a plurality of disclosed patentably distinct species comprising:
  - (a) a product capable of treating oxidative stress in a target;
  - (b) a product capable of chemically reducing a target;
  - (c) a food product;
  - (d) a personal care product; and
  - (e) a pharmaceutical product,

which require a burdensome classification, and/or bibliographic, manual and computer search.

Accordingly, if Group I is elected, the Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

To be complete, a response to the election of species requirement should include a proper election along with a listing of all claims readable thereon, including any claims subsequently added. MPEP 809.02(a).

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الله الما المنظلية . والمنظلة المنظلة المنظ Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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SUPERVISORY PATENT EXAMINER

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